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tucky mirrors the views of the nation and the wo
on the question of capital punishment for childr
Examination of the application of the death pena
to juveniles in Kentucky is particularly informat
because Kentucky is in a transition period. The leg
lature has abolished capital punishment for juveni
as of July 1, 1982 but the current death penalty l
does not prohibit this ultimate penalty for juveni
Moreover, Kentucky's Supreme Court issued a la
mark, well-reasoned decision banning life with
parole for juveniles as cruel punishment in 1968.

5. Whether a death sentence constitutes cruel a
unusual punishment when applied to a juvenile m
be determined on the basis of the evolving standa
of decency, and Kentucky's experience with the de
penalty for juveniles is clearly relevant to those ev
ing standards. Moreover, this Court has manda
that a death sentence may not be imposed in an a
trary, capricious or freakish manner, and Kentuck
experience is also relevant to that question.

6. One issue to be presented in Todd Ice's di
appeal to the Kentucky Supreme Court is whether
death sentence constitutes cruel and unusual pun
ment under the Eighth and Fourteenth Amendme
to the United States Constitution because of his ten
age at the time of the offense. That is the issue bef
this Court in this case.

WHEREFORE, Kentucky Youth Advocates a
Kentucky Office for Public Advocacy respectfu
quest this Court to permit them to file the at
brief *amici curiae* in the above-captioned case.

Respectfully submitted,

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Assistant Public Advocat

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IN THE

SUPREME COURT OF THE

October Term, 198

No. 80-5727

MONTY LEE EDDINGS, - -

v.

STATE OF OKLAHOMA, - - -

On Writ of Certiorari to th
Court of Criminal Ap

BRIEF AMICI CURIAE OF KE
ADVOCATES AND THE KEN
FOR PUBLIC ADVO

INTEREST OF KENTUCKY YOUT
THE KENTUCKY OFFICE
ADVOCACY AS AMICI

1. Kentucky Youth Advocate
class advocacy group acting on b
volved in the many different aspe
justice system from foster care
linquency proceedings and actu

Kentucky Youth Advocate
all children involved in th
ticularly with those facing
sentenced to death.

2. The Kentucky Office
resents indigent defendants
out the Commonwealth of
represented several juven
offenses and is presently re
to the Kentucky Supreme C
year old boy who was convi
for a murder allegedly com
years old.

SUMMARY OF

An examination of Kent
death penalty for juveniles
in determining whether cap
niles constitutes cruel and
tucky may be viewed as a m
it is a "middle ground" stat
law is applicable to juvenile
legislature has abolished th
under eighteen at the tim
Furthermore, Kentucky's l
constitutionality of the pen
niles in a landmark decisio

Kentucky's experienc
of capital punishment fo
Prosecutors rarely seek
niles, and juries and jud
them. Only one juvenile
the four and a half years
been in effect. His sente
disproportionate to the se
adult capital defendants
as Kentucky's experienc
death sentence will inevit
it is thus both "unusual"

Finally, life on deat
unusual punishment whi
chological damage to a ch
is eventually set aside.
and the Kentucky Office
Court to hold that Monty
constitutes cruel and u
by the Eighth and Fou
United States Constituti

ARG

**The Infliction of the Deat
Sixteen at the Time of th
Unusual Punishment Und
Amendments to the Con**

The legislature, ob
abolished capital pu
1982. However, j
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stitutionality of ev
as applied to juv
tucky's highest cou
tion, struck down a
parole for the crim
juvenile.

In spite of the u
tionality of the a
death penalty law t
pursuing death sent
the young. Kentuc
tween states such
permit capital puni
as Tennessee whic
amici curiae believ
perience with the
has culminated in i
be helpful to this C
tucky illustrates th
for children by mo
the inevitable disp

sentence to the s
capital defendant

In *Trop* v. *D*
Court emphasize
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power to punish,
assure that this
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The Supreme
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without parole fo
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[2]Kentucky's expe
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that the judicial pr
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In 1975, "[a]ll c
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wealth, 429 S
Of special si
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. . ." *Id.*
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Id. In *Wo*
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[3] *Workman*
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lowing either a jury trial or the entry of a guilty p
In fact, although Kentucky's most recent death
alty law was enacted in December of 1976 (Ky.
Stat. §§ 507.020, 532.025, 532.075 (1976)), only
juvenile, Todd Ice, has been sentenced to die in
four and a half year period.[7]

Todd Ice, who was only fifteen at the time of
alleged offense, had never been arrested previo
He was an outstanding student who lived on a f
was active in the 4-H Club and had won nume
awards at state and local fairs. Surely his being
only juvenile sentenced to death in the Commonwe
of Kentucky is exactly the sort of "wanton"
"freakish" application of the death penalty denou
in *Furman* v. *Georgia*, 408 U. S. 238, 310 (1
(Stewart, J., concurring).

Additionally, Kentucky's Supreme Court is
quired by Ky. Rev. Stat. § 523.075(3)(c) to d
mine "whether [a] sentence of death is excessiv
disproportionate to the penalty imposed in sim

[7]In recent years Kentucky prosecutors have seriously pu
the death penalty against four juveniles. Three [Robert B.
(age sixteen at time of alleged offense) and Alvin Forrest
seventeen at time of offense) in Jefferson County (Indict
Number 159102) and Pearl Stepp (age fourteen) in Harlan C
(Indictment Number 78-CR-001)] pled guilty to sentences less
death. One [Tommy Bowling (age seventeen) in Powell C
(Indictment Number 79-CR-025)] was tried by a jury and rec
twenty years although his adult brother was sentenced to

cases, considering both the crime and the defend
Of course, this statute merely implements the fe
constitutional requirement of "proportionality" i
imposition of the death sentence as required by
man v. *Georgia, supra,* and *Gregg* v. *Georgia,* 428
153 (1976).

It seems obvious that a death sentence receiv
a juvenile such as Todd Ice is "disproportionat
the non-capital sentences received by other capit
fendants in general and by all other juveniles su
to the death penalty in the Commonwealth of
tucky. Ice's sentence is as "unusual" as it is "cr
Moreover, as petitioner's brief explains, death
tences for juveniles are rare throughout our cou
Of course, the youth of the defendant must be
sidered in all jurisdictions in deciding whether t
pose capital punishment as a matter of federal
stitutional law. *Lockett* v. *Ohio,* 438 U. S. 586 (1
Bell v. *Ohio,* 438 U. S. 637 (1978). Kentucky
Advocates and the Kentucky Office for Public
vocacy submit that the death penalty can nev
constitutionally imposed on a juvenile because i
always be disproportionate to the sentences re
by adult capital defendants and the overwhelmin
jority of juveniles in similar circumstances.

D.

seek this ultimate penalty at great expens
trial courts lack the resources and perspectiv
mine whether a death sentence is disproport
a juvenile, the young are sentenced to die
wait on death row until their appeals are
Although the death sentences of many of th
niles may eventually be invalidated, *amici c*
mit that life on death row constitutes crue
usual punishment for a child.

There can be no question that a person
possibility of a death sentence experiences co
stress which may cause him to deteriorate
A person actually sentenced to die underg
psychological trauma. Johnson, R., *Under*
of Death: The Psychology of Death Row Co
5 LAW AND PSYCH. REV. 141 (1979). Sig
since 1976 four persons sentenced to death
executed (three voluntarily, one involuntari
six have committed suicide. Palmer, "De
U.S.A.," Legal Defense Fund (April 20, 198
the suicide rate exceeding the execution ra
death row inmates, there is no doubt tha
mental stress plagues even adults facing d
tences. The trauma for a juvenile is unque
far more severe.

Kentucky Youth Advocates and the Kentu
for Public Advocacy urge this Court to hol

death sentence for juveniles is absolu
by the Eighth and Fourteenth Amendm
any more children from suffering poss
psychological trauma while living on d

A look at Kentucky as a microcosm
reveals rejection by contemporary soci
penalty for juveniles as evidenced by th
courts, the legislature, prosecutors and
ing standards of decency require that
subject to capital punishment. Furth
imposition of the death penalty on juv
as to be almost nonexistent in Kent
where. Todd Ice's death sentence is a
of "lightning striking," *Furman* v. *Ge*
309 (Stewart, J., concurring), and no
sentence could be proportionate to the
tences almost invariably received by
in similar circumstances and often re
capital defendants. Thus the inflictio
sentence on Monty Lee Eddings who w
time of the offense would be cruel and
ment prohibited by the Eighth and Fou
ments to the United States Constituti

CONCLUSION

For the reasons stated above, Ke
vocates and the Kentucky Office for
as *amici curiae,* urge this Court to re
of the Oklahoma Court of Crimina
hold that Monty Lee Eddings' deat
tutes cruel and unusual punishment
Eighth and Fourteenth Amendment

Respectfully submitt

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J. VINCENT
Assistant De
Counsel

PROOF OF SERV

I, M. Gail Robinson, counsel fo
certify that the foregoing Motion f
Amici Curiae and Brief Amici Curi
Advocates and the Kentucky Office fo
served on Jay C. Baker, Attorney
sonally mailing three (3) copies of
to him at his office, 1850 South Bou
74119 and on David Lee, Assistant
torney for Respondent, by persona
copies of the Motion and Brief to h
112, State Capitol, Oklahoma City,

M. Gail R
Assistan
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